

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 358 of 2000

WITH

CIVIL APPLICATION NO 3491 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJLIBEN VELJIBHAI RATHWA

Versus

MAHESHBHAI MOHANBHAI DESAI

Appearance:

MR MTM HAKIM for Petitioner

NOTICE SERVED for Respondent No. 1

MS MEGHA JANI for Respondent No. 3

MR TARESH J BHATTJI for Respondent No. 7

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Notice waived by Mr. T.J. Bhattji for respondent no. 7 - original claimant no. 1, widow of deceased. Whereas remaining respondents against whom no relief is claimed in the appeal are not necessary parties and, therefore, they are permitted to be deleted.

2. The only question which has been raised before us in this appeal is with regard to apportionment of compensation awarded to original claimants on account of unfortunate demise of bread winner, out of whom one happened to be the widow and the other widowed mother.

3. The Tribunal before passing final order has observed that original applicant no. 2 who was the mother of the deceased would be entitled to 1/3rd amount of compensation as a necessary corollary. The original claimant no. 1 widow would be entitled to remaining amount of compensation. No-doubt the question of apportionment of amount of compensation cannot be in a strict rigid straight jacket formula. It has to be moulded and shaped in accordance with the facts of a given case and extent of dependency on the income of deceased in case of no earning members of the family together with age and avocation, if any, and the prospects of re-marriage in so far as disbursement aspect of apportionment part is concerned.

4. It is a common case that the original applicant no. 1 widow was 25 years old at the relevant time. Unfortunately she had no issue. Whereas original claimant no. 2 is the widowed mother of the deceased, who is aged about 56. She is more than double in age than the claimant no. 1 widow of the deceased.

5. The impugned judgment and award indicates upon reading that the widow of the deceased has remarried and has also been fortunate to have two children. Ofcourse, the otherside has not admitted this part for the reasons not known to us. Be as it may. The exercise of discretion in the peculiar facts and special circumstances in making apportionment of the amount of compensation in the present case as done by the Tribunal in the penultimate paragraph of the impugned judgment needs modification so as to see that the quantum of compensation is as far as possible apportioned in the line of extent of dependency security, safety of the heirs and legal representatives of the deceased and in

that context we are fully satisfied that out of total amount of compensation awarded at Rs.2,27,000/-, instead of 1/3rd to the mother, the widowed mother shall be entitled to an amount of Rs.1,00,000/- (Rupees one lac only) with proportionate cost and interest thereon; whereas the remaining amount shall be payable to the widow of the deceased, who has now remarried. Ofcourse, she would be entitled to interest and costs proportionately on the said amount.

6. In the light of the facts and circumstances of the case, therefore, while allowing this appeal, the quantum or ratio of apportionment shall stand accordingly modified. In other words out of the total amount awarded by the Tribunal for the death of the bread winner of the family at Rs.2,27,000/-, the original claimant no. 1 widow of the deceased shall be entitled to amount of Rs.1,27,000/-; whereas original claimant no. 2 widow mother who is in her advanced age would be entitled to Rs.1,00,000/- with proportionate cost and interest. With this modification in the award, the appeal is partly allowed in so far as the amount of apportionment is concerned. Appeal accordingly shall stand disposed of. As the main appeal is partly allowed and disposed of accordingly, the Civil Application No. 3491/2000 does not survive. Hence, it is disposed of accordingly.

* * *

PVR.